

**REMARKS****I. Introduction**

Claims **1-49, 61-63, and 88-99** are currently pending in the present application. Claims **1, 4, 9, 18-19, 61-63, 88, and 95-96** are independent. All pending claims stand rejected. In particular:

(A) claims **1-3, 5-7, 13-14, 20-22, 24-26, 31, 61-63, 88, 91, and 93-96** stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent Application Publication No. 2008/0162330 (hereinafter “Atkinson”) in view of U.S. Patent No. 5,076,588 (hereinafter “Minh”);

(B) claims **8, 10-12, 15-17, 23, 28-30, 37-39, 41-42, 89, and 92** stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of U.S. Patent No. 6,108,639 (hereinafter “Walker I”);

(C) claim **47** stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of U.S. Patent No. 5,770,533 (hereinafter “Franchi”);

(D) claim **46** stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of Walker I, in yet further view of Franchi, in still further view of U.S. Patent No. 6,243,691 (hereinafter “Fischer”);

(E) claims **32-33** stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of Walker I, in yet further view of Franchi, in still further view of European Patent EP 0 411 748 (hereinafter “Scholldorf”);

(F) claim **43** stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of Walker I, in yet further view of Franchi, in still further view of “Efficient parallel algorithms for the minimum cost flow problem”, Journal of Optimization Theory and Applications, Vol. 95, No. 3 (December 1997), pgs.501-530 (hereinafter “Baraldi”);

(G) claims **44-45** stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of Walker I, in yet further view of Franchi, in still further view of “Budget Leaves out Spectrum Fee”, Waren Publishing, Television Digest, Vol. 35, No. 7, February 13, 1995 (hereinafter “Waren”);

(H) claims **4, 8, and 18-19** stand rejected under 35. U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of Walker I, in yet further view of Franchi, in still further view of U.S. Patent No. 4,856,788 (hereinafter “Fischel”);

(I) claim **19** stands rejected under 35. U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of U.S. Patent No. 4,940,240 (hereinafter “Bradley”);

(J) claims **27, 34-36, and 48-49** stand rejected under 35. U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of Walker I, in yet further view of Franchi, in still further view of U.S. Patent No. 6,012,045 (hereinafter “Barzilai”);

(K) claims **67-83** stand rejected under 35. U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of Walker I, in yet further view of Franchi, in still further view of U.S. Patent No. 6,363,365 (hereinafter “Kou”); and

(L) claim **90** stands rejected under 35. U.S.C. §103(a) as being allegedly unpatentable over Atkinson in view of Minh, in further view of Walker I, in yet further view of Franchi, in still further view of U.S. Patent No. 5,200,890 (hereinafter “Pionchon”).

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the remarks provided herein and in accordance with 37 C.F.R. §1.112.

## **II. Improper Reference – Atkinson**

Applicants respectfully note that Atkinson is a continuation of U.S. Patent Application Serial No. 09/753,074 filed on December 29, 2000, and issued as U.S. Patent No. 7,599,878 (hereinafter the “Atkinson Parent”). The Atkinson Parent *does not* predate the filing date of the present application. The Atkinson Parent is a Continuation-In-Part (“CIP”) of U.S. Patent Application Serial No. 09/252,790 filed on February 19, 1999 and issued as U.S. Patent No. 6,230,146 (hereinafter the “Atkinson Grandparent”). The Atkinson Grandparent *does* predate the actual filing date of the present application.

Applicants respectfully note that the Atkinson Grandparent is approximately eighty (80) pages in length, while the CIP Atkinson Parent is only about thirty-five (35) pages in length. The Examiner cites portions of Atkinson (and thus the Atkinson Parent, since they share a common disclosure) in support of all grounds of rejection herein. It is not clear, however, especially due to

the vast differences between the disclosures of Atkinson/the Atkinson Parent and the Atkinson Grandparent, if any of such cited portions of Atkinson/the Atkinson Parent exist and/or are properly described in the Atkinson Grandparent and thus actually warrant priority earlier than the filing date of the present application. For this reason, Atkinson/the Atkinson Parent are not proper references to support grounds for rejection of the pending claims (*e.g.*, the appropriate reference would be the one that actually predates the filing date of the present application – the Atkinson Grandparent).

Applicants accordingly respectfully request that the Examiner provide a proper ground for rejection by citing the *actual reference* that predates the filing date of the present application – *i.e.*, the Atkinson Grandparent – and citing the portions of such reference. In the alternative, although not as desirable a course of action, the Examiner could cross-reference the currently cited portions of Atkinson to any supporting sections in the Atkinson Grandparent, thus providing evidence that the currently cited portions of Atkinson are indeed properly accorded a priority date that predates the filing date of the present application.

At least for these reasons, all current grounds for rejection should be **withdrawn and replaced** with appropriate grounds for rejection.

### **III. The Examiner's Grounds for Rejection**

All current grounds for rejection rely on the Examiner's allegation that Atkinson teaches awarding a bidder something other than the product which is the subject of the auction. See, Office Action, pgs. 25-26, bullet 16.

Applicants respectfully note that the auction in Atkinson to which the Examiner cites is a **supply contract auction**. Suppliers bid on who gets to supply certain products to the buyer. Contrary to the Examiner's allegation, the products are *not* the "products" subject to bidding – the contracts themselves are the subject of the bidding and accordingly would be most equivalent to the claimed "product".

The Examiner's allegation to the contrary is simply an unreasonable interpretation of the cited reference that would be repugnant to one of ordinary skill in the art.

At least for these reasons, all current grounds for rejection should be **withdrawn**.

**IV. Conclusion**

At least for the foregoing reasons, it is submitted that all pending claims are in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested. Applicants' silence with respect to any comments made in the Office Action does not imply agreement with those comments.

Alternatively, if there remain any questions regarding the present application, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number (203) 438-6867 or via e-mail at [cfincham@finchamdowns.com](mailto:cfincham@finchamdowns.com), upon the Examiner's convenience.

**V. Fees and Petition for Extension of Time to Respond**

While no fees are believed to be due at this time, please charge any fees that may be required for this Amendment to Applicants' Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Applicants' Deposit Account No. 50-0271.

Respectfully submitted,

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Date

/Carson C.K. Fincham, Reg.#54096/  
Carson C.K. Fincham  
Fincham Downs, LLC  
*Attorney for Applicants*  
Registration No. 54,096  
[cfincham@finchamdowns.com](mailto:cfincham@finchamdowns.com)  
(203) 438-6867 /voice  
(203) 461-7300 /fax